

47UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 14-20346

Hon. Matthew F. Leitman

v.

JOSHUA TUCHOLSKI,

Defendant.

ORDER DENYING DEFENDANT
A CERTIFICATE OF APPEALABILITY

On November 22, 2016, the Court entered an order denying Defendant Joshua Tucholski's ("Tucholski") Motion to Vacate his sentence pursuant to 28 U.S.C. § 2255. (*See* ECF #50.) In that Order, the Court did not address whether it would grant Tucholski a Certificate of Appealability with respect to the Court's ruling. (*See id.*) Through this Order, the Court **DENIES** Tucholski such a certificate.

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To receive a certificate of appealability, "a petitioner must show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate

to deserve encouragement to proceed further.” *Miller–El v. Cockrell*, 537 U.S. 322, 336, (2003) (internal quotes and citations omitted). The Court finds that reasonable jurists could not debate the correctness of this Court’s ruling that Tucholski was not entitled to relief under 28 U.S.C. § 2255. As the Court explained, Tucholski failed to establish the required “cause” for failing to raise on direct appeal the claims he brought in his Section 2255 motion (*see* ECF #50), and there is no reasonable argument to the contrary. Accordingly, the Court declines to issue a Certificate of Appealability.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: January 9, 2017

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 9, 2017, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
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